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Theodore W. Olds
CARLSON, GASKEY & OLDS, P.C.
400 W. Maple Road, Suite 350
Birmingham, Michigan 48009

In re Application of
BREYNAERT, François
U.S. Application No.: 09/601,545
PCT No.: PCT/FR99/00193
Int. Filing Date: 29 January 1999
Priority Date: 03 February 1998
Attorney's Docket No.: 60130-865
For: MERITOR LIGHT VEHICLE SYSTEMS

DECISION

This decision is in response to applicant's "Petition to Withdraw From Abandonment/Revive Application" ("Pet.") filed 16 November 2000. The "Petition to Withdraw From Abandonment" is being treated as a petition under 37 CFR 1.181 which requires no petition fee.

BACKGROUND

On 29 January 1999, applicant filed international application PCT/FR99/00193 claiming priority to a French patent filed 03 February 1998. A copy of the international application was communicated from the International Bureau to the United States Patent and Trademark Office ("PTO") on 12 April 1999.

On 30 April 1999, a Demand was filed with the International Preliminary Examination Authority electing the United States. The election was made prior to the expiration of 19 months from the priority date. Accordingly, the deadline for submission of a copy of the international application and payment of the basic national fee was extended to expire thirty months from the priority date, *i.e.*, 03 August 2000.

On 03 August 2000, applicant filed a transmittal letter for entry into the national stage in the United States under 35 U.S.C. 371 which was accompanied by, *inter alia*, an English translation and authorization to charge the basic national fee to Deposit Account No. 18-1720. The transmittal letter was signed by Ms. Kerrie A. Laba who was not listed on the Deposit Account authorization list.

On 12 October 2000, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment (Form PCT/DO/EO/909) because of failure to provide the full U.S. Basic National Fee by 30 months from the claimed priority date.

On 16 November 2000, applicant submitted the instant petition.

On 08 February 2000, applicant submitted via facsimile a letter verifying that the instant petition is for the above-captioned application.

DISCUSSION

Withdraw Holding of Abandonment

Counsel requests that the Notification of Abandonment be withdrawn in the above-captioned application. Counsel contends that the failure to pay the full U.S. basic national fee was due to a clerical mistake in using the wrong Deposit Account on the transmittal letter. Nonetheless, counsel argues that "applicant did make a bona fide attempt to pay the filing fee within the required period of time." Pet. ¶ 1. This argument is unpersuasive.

37 CFR 1.495 *Entering the national stage in the United States of America as an Elected Office*, states in part:

Where the United States of America has been elected by the expiration of 19 months from the priority date, the applicant must fulfill the requirements of 35 U.S.C. 371 within the time periods set forth in paragraphs (b) and (c) of this section in order to prevent the abandonment of the international application as to the United States of America . . .

(b) To avoid abandonment of the application, the applicant shall furnish to the United States Patent and Trademark Office not later than the expiration of 30 months from the priority date: . . .

(2) The basic national fee (see § 1.492(a)). The 30-month time limit may not be extended.

In the instant petition to withdraw the holding of abandonment, applicant does not dispute that Ms. Kerrie A. Laba was not authorized to charge fees on Deposit Account No. 18-1720. Rather, counsel argues that the failure was due to not using the Deposit Account of Meritor Automotive "For which applicant's primary attorney contact was authorized" on the transmittal letter. Nevertheless, a "bona fide attempt" was made. Id.

Whether applicant made a bona fide attempt to pay the filing fee within the required time period is not the applicable standard in this situation. The rules clearly state that applicant must pay the basic national fee prior to the expiration of the 30-month deadline and that an extension of the 30-month time limit will not occur. Applicant failed to pay the basic national fee in time, therefore, the above-captioned application was properly abandoned.

Petition to Revive

Applicant alternatively requests to revive the unintentionally abandoned application. A petition under 37 CFR 1.137(b) requesting that the application be revived on the grounds of unintentional delay must be accompanied by (1) a proper reply, unless previously filed, (2) the petition fee required by law, (3) a statement that the "entire delay in filing the required reply from the due date for the reply to the filing of a grantable petition pursuant to this paragraph was unintentional," and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

The statement that "[a]ny delay from [sic] the point of receiving the Notification of Abandonment mailed 12 October 2000 and today's date was also unintentional" has been interpreted as meaning that the "entire delay in filing the required reply from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional" as required by 37 CFR 1.137(b)(3). If this is an incorrect interpretation, applicant is requested to notify this office.

The petition fee, basic national fee and surcharge fee for furnishing the declaration late pursuant to 37 CFR 1.492(e) have been charged to Deposit Account No. 50-1482 as authorized. A terminal disclaimer is not required in this application.

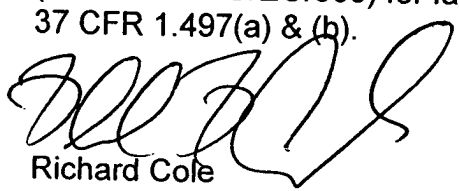
Accordingly, all requirements under 37 CFR 1.137(b) have been satisfied.


DECISION

In view of the discussion mentioned above, applicant's petition under 37 CFR 1.181 is **DISMISSED** without prejudice. However, the petition to revive pursuant to 37 CFR 1.137(b) is **GRANTED**.

A review of the declaration submitted with the instant petition reveals that the declaration was for the national stage of PCT/FR98/01318.

The application is being forwarded to the United States Designated/Elected Office for further processing including mailing a Notification of Missing Requirements (Form PCT/DO/EO/905) for failing to provide an oath or declaration in compliance with 37 CFR 1.497(a) & (b).


Richard Cole
PCT Legal Examiner
PCT Legal Office


James Thomson
PCT Attorney
PCT Legal Office

Tel.: (703) 308-6457